

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

NO. 77-6155

UNITED STATES COURT of APPEALS FOR THE SECOND CIRCUIT

SAMUEL M. KAYNARD, REGIONAL DIRECTOR OF
REGION 29 OF THE NATIONAL LABOR RELATIONS
BOARD, FOR AND ON BEHALF OF THE NATIONAL
LABOR RELATIONS BOARD,

Petitioner-Appellant,

v.

LOCAL 282, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Respondent-Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR PETITIONER-APPELLANT

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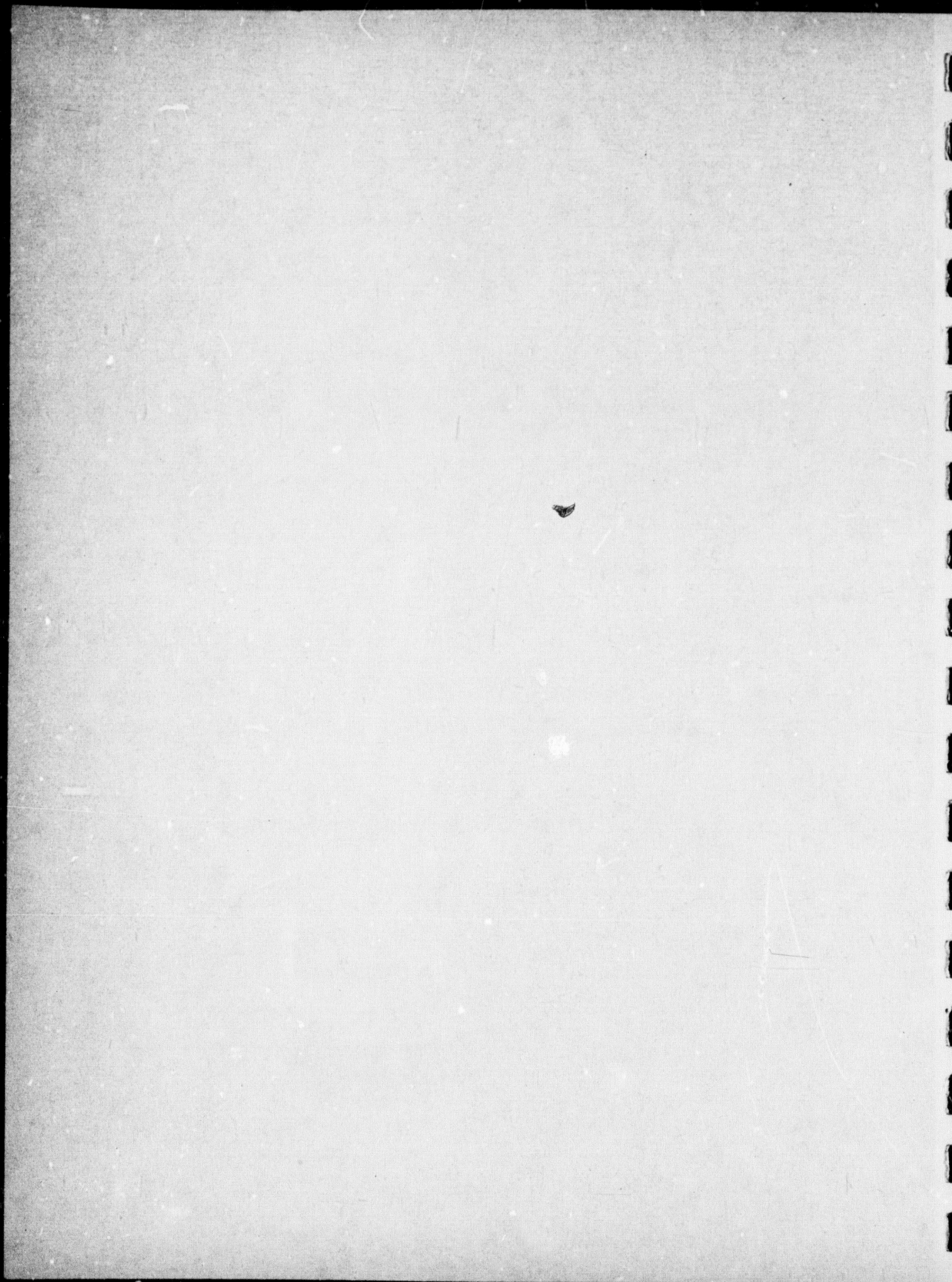
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ON APPEAL FROM AN ORDER OF THE UNITED STATES
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BRIEF FOR PETITIONER-APPELLANT

I. STATEMENT OF THE ISSUES

1. Whether the court below was clearly erroneous in failing to find reasonable cause to believe that the Union violated Section 8(b)(4)(i)(ii) (B) when it picketed a general contractor at a construction site in support of its labor dispute with a subcontractor.

2. Whether, after finding reasonable cause to believe that the Union was engaging in conduct violative of Section 8(b)(4)(D) of the Act, the court below improperly limited the scope of its order to enjoin attempts

by the Union to obtain only work presently performed by employees represented by Local 1 rather than also enjoining unlawful attempts to obtain work presently performed by employees represented by any other labor organization or by employees who are unrepresented.

3. Whether the court below improperly included in its injunction an order assigning the disputed work.

II. STATEMENT OF THE CASE

This is an appeal from an order of the United States District Court for the Eastern District of New York, per Judge Jack B. Weinstein, granting in part and denying in part a petition for a temporary injunction filed on behalf of the National Labor Relations Board (herein the "Board") by Samuel M. Kaynard, Regional Director of the Board's Twenty-ninth Region (herein the "Regional Director"), Petitioner-Appellant, pursuant to the provision of Section 10(1) of the National Labor Relations Act, as amended (60 Stat. 149; 73 Stat. 544; 29 U.S.C. Section 160(1), herein the "Act"). The order of the court below was entered on August 1, 1977 (A. 159-160),^{1/} predicated upon findings of fact and conclusions of law read into the record on July 20, 1977 and subsequently filed on August 1, 1977 (A. 153-158). The Board's Notice of Appeal was filed on September 16, 1977 (A. 161-162).

The Board has appealed from the injunction order only insofar as it (1) fails to proscribe conduct in violation of Section 8(b)(4)(i)(ii)(B) of the Act; (2) improperly limits the scope of the injunction prohibiting conduct violative of Section 8(b)(4)(i)(ii)(D) of the Act; and (3) impermissibly directs the assignment of the disputed work.

^{1/} "A." references are to the joint appendix accompanying the briefs.

Jurisdiction of the Court is invoked under Section 1291 and 1292 of Title 28 of the United States Code.

A. The Proceedings Below

1. The Unfair Labor Practice Charges

On June 29, 1977, Active Fire Sprinkler Corp. (herein "Active") filed unfair labor practice charges with the Board's Regional Office alleging that Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein "Local 282"), was engaging in picketing violative of Sections 8(b)(4)(i)(ii)(B) and (D) of the Act (A. 8-9). ^{2/} The gravamen of these charges is that Local 282 threatened and picketed John T. Brady & Co., Inc. (herein "Brady") with an object of causing Brady to cease doing business with Active, a violation of Section 8(b)(4)(B) of the Act; and (2) to force Brady and Active to assign the work of driving trucks carrying materials at the J.F.K. site to employees represented by Local 282 rather than to employees represented by Plumbers Local Union No. 1 of Brooklyn and Queens (herein "Local 1") or Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein "Local 918"), a violation of Section 8(b)(4)(D) of the Act.

2. The Petition For An Injunction

Following his investigation of these charges, the Regional Director concluded that there was reasonable cause to believe that Local 282 was engaging in the unlawful conduct charged and that a complaint should

^{2/} Board Case Nos. 29-CC-574 and 29-CD-237, respectively.

issue. ^{3/} Accordingly, pursuant to Section 10(1) of the Act, on July 7, 1977, the Regional Director filed a petition for temporary injunctive relief pending final disposition by the Board of the unfair labor practice charges (A. 1-9).

Pursuant to a Notice to Show Cause (A. 10-11), on July 12, 1977, Local 282 filed its Answer in substance denying the allegations the petition (A. 12-14). On July 20, 1977, the court below conducted an evidentiary hearing at which the Board and Local 282 were afforded full opportunity to, and did present evidence and arguments. Local 1 was also represented by counsel at the hearing.

At the conclusion of the hearing on July 20, 1977, the court below (1) made findings of fact that were read into the record; (2) denied an injunction based on the alleged Section 8(b)(4)(B) violations; and (3) reserved judgment on the Section 8(b)(4)(D) allegation pending further argument and the submission of briefs. In the interim, the court issued a temporary restraining order directing portions of the work in dispute to be performed by employees represented by Local 1 and other portions to be performed by employees represented by Local 282. The court further ordered that work immediately be resumed in the manner directed (A. 118, 119).

^{3/} A complaint in Case No. 29-CC-574, alleging a violation of Section 8(b)(4)(i)(ii)(B), issued on July 11, 1977 and a hearing before an Administrative Law Judge was held on July 27, 1977. Pursuant to the statutory scheme, explained *infra*, pp. 34, 39-40, issuance of a complaint in the Section 8(b)(4)(D) proceeding has been held in abeyance pending the Board's resolution of the underlying work jurisdiction dispute pursuant to Section 10(k) of the Act. The Section 10(k) hearing was held on August 3 and 23, 1977.

On July 26, 1977, after hearing argument by the parties, the court reaffirmed its conclusion that there was not reasonable cause to believe that the Union had violated Section 8(b)(4)(B) of the Act, found reasonable cause to believe that the Union violated Section 8(b)(4)(D) of the Act, and continued the terms of the temporary restraining order in the form of a preliminary injunction (A. 152).

B. Statement of the Facts

The essentially uncontroverted evidence adduced at the hearing may be summarized as follows:

1. Background

a. The parties involved

Brady is the general contractor for the construction of a mail handling facility for the United States Postal Service at the John F. Kennedy International Airport, Jamaica, New York (herein the "J.F.K. site") (A. 155; A. 68). ^{4/} Brady is signatory to a multi-employer association collective bargaining agreement with Local 282, covering Brady's truck driver employees. The agreement, known as the "High-Rise Contract," is effective from July 1, 1975, to June 30, 1978 (A. 155-156; 69-70, 235).

Section 9 of the collective bargaining agreement provides, in pertinent part (A. 236-237):

1. The driving of all trucks owned, operated or under the control of the Employer shall be performed by employees of the Employer and covered by this Agreement. . . . The Union will not claim jurisdiction over those vehicles which are driven by mechanics and skilled tradesmen incidental to the trade itself with their hand tools of their trade only. In no event will men, material or equipment be transported in such vehicles.

^{4/} In the following statement of the facts, references appearing before a semicolon are to the court's findings of fact; those following are to the supporting evidence.

2. The driving of all trucks at the site of construction in connection with work which the Employer is contracted to be responsible for, manage, or perform, shall be performed by employees of the Employer and covered by this Agreement, provided that the Employer may contract or subcontract said work only to an employer or person who is party to or bound by this agreement, regardless of past practice and custom. This section shall not apply to the driving of a truck entering or leaving the site of construction for the sole purpose of making a single delivery and/or single pick up from the construction site of materials, tools or personnel, provided such single delivery and/or pick up may be made only to (or from) a single location per delivery or pick up on the site. A truck making a single delivery to single location may make a single pick up from a separate single location.

* * *

The provisions of this Agreement re on-site trucking shall be made a condition of any supply contract, and any contract or subcontract awarded or "managed" by the Employer covered by this Agreement. If, notwithstanding the above, any other Union claims jurisdiction over any work required by this Agreement to be performed by employees covered by this Agreement, Local 282 will proceed diligently to process the dispute through the New York Plan; pending final resolution of the dispute, the Employer shall assign an employee covered by this Agreement to perform the work in question, whether or not any contractor or subcontractor refuses to comply with its obligations (Emphasis added).

Active manufactures and installs plumbing and automatic fire sprinkler systems (A. 154; A. 30). In March, 1977, ^{5/} Active entered into a subcontracting agreement with Brady to perform the plumbing and fire protection work at the J.F.K. site (A. 156; A. 31-32, 69, 163-164, 214-230). Active's plumber employees are represented in collective bargaining by Local 1. The current collective bargaining agreement between Active and Local 1 extends from August 8, 1975 to August 3, 1978 (A. 156; A. 34-35, 165-197). Active is also party to a collective bargaining agreement with Local 918 covering Active's truck driver employees (A. 156; A. 33, 35-36, 198-210). None of Active's employees are represented by Local 282, nor is Active signatory to any agreement with Local 282 (A. 36).

^{5/} All dates refer to 1977 unless otherwise stated.

Burmar Electric Corp. (herein "Burmar") and Novid Corp. (herein "Novid") entered into subcontracting arrangements with Brady for the performance of the electrical and excavation work, respectively, at the J.F.K. site (A. 156; 69). Both Burmar and Novid had employees working at the J.F.K. site during the time of the instant labor dispute; however, there is no record evidence that either company has a bargaining relationship with Local 282 or employs workers represented by Local 282.

b. The work in dispute

The instant labor dispute concerns the work of driving trucks carrying supplies and materials from one point on the J.F.K. site to another. The dispute derives from Local 282's insistence that pursuant to Section 9 of its contract with Brady, all such work must be performed by employees of Brady who are covered by the Local 282 agreement, and that the work may be performed by employees of Brady's subcontractors only if the subcontractors are also signatory to the collective bargaining agreement with Local 282 (A. 21, 89, 111-112).

Beginning in March, Active has had three types of trucks on the construction site: (1) suppliers' trucks driven by independent contractors bringing pipe to the site from outside New York State; (2) Active's trucks delivering materials to the site from Active's home office at the Brooklyn Navy Yard; and (3) a jeep and jeep pickup truck employed to carry materials, tools and men from one point on the site to another. Active's delivery trucks are driven by its employees who are members of Local 918. The materials and supplies are unloaded either at a single location on the site or at multiple drop points (A. 43, 48, 55, 61, 64, 65). These materials are then trans-

ported either by the jeeps or a "cherry picker," or are hand carried by the workers, from the single or multiple locations to the actual site where pipe is being installed (A. 48-49, 62-64). The jeeps are driven by Active's plumbers who are members of Local 1 (A. 34). They are used primarily to transport men and small tools and materials from the shanty trailer area to the place of pipe installation (A. 53-54). The materials carried on the jeeps are generally strips of lead, weighing 25 pounds each, and oakum, both of which are used to join pipes, and elbows, connectors, valves and hand tools (A. 60, 64, 96, 105, 106). Five-foot lengths of pipe are sometimes carried on the jeeps although these lengths of pipe are also hand carried by the men (A. 106). Larger lengths of pipe are moved by the "cherry picker," which is operated by a member of Local 15, Operating Engineers (A. 62-64, 106). ^{6/} The plumbers consider the material carried in the jeeps, as well as the jeeps themselves, to be "tools of the trade;" accordingly, they consider the driving of the jeeps to be their work and they have traditionally performed it (A. 39, 96, 97, 104).

Brady employs Local 282 members to drive its trucks at the job site (A. 69-70). However, neither these employees nor any other Local 282 members have ever driven the subcontractors' trucks in the past (A. 70, 94-95).

^{6/} Local 282 also sought to obtain the work of operating the "cherry picker" (A. 117).

2. Local 282 attempts to obtain all the truck driving work on the jobsite

- a. Local 282 harrasses Active's employees and seeks to cause Active to hire a Local 282 driver and sign a Local 282 Agreement

In late March 1977, Active began receiving shipments of pipe at the J.F.K. site from its supplier, Meade Pipe Co. of Lynchburg, Virginia. The pipe was delivered via common carrier trucks driven by independent contractors, who were not members of or represented by Local 282 (A. 32-33, 51). On March 22, 1977, Local 282's business agent, John Carbone, told Barry Cohen, Active's superintendent at the J.F.K. site, that under Local 282's contract with Brady, any subcontractor's trucks entering the site to deliver pipes were to make a single drop of materials in one location on the site and were not allowed to make multiple drops (A. 42, 52, 65). Cohen contacted Morton Hirsch, President of Active, who said that Active had no agreement with Local 282 and that Cohen should proceed as planned (A. 52).

On the following day, March 23, Local 282 representative Carbone returned to the site and, when he observed the trucks continuing to make multiple drops of materials, he told superintendent Cohen that while Local 282 "couldn't do anything to Active" he could "get" Brady's general superintendent Louis Ferrari, because Ferrari "knew what he had to do" (A. 53, 65). Thereafter, between March 23 and July 1, William Coty, Local 282's shop steward at the site, followed all trucks bringing materials to Active at the J.F.K. site and watched the drops of supplies that were made (A. 53, 65).

Sometime in April, Active began to deliver materials to the job site from its home office at the Brooklyn Navy Yard in its own trucks driven by members of Local 918 (A. 55). As described above, these trucks also made

single and multiple drops of materials at the site. On numerous occasions between April and July 1, William Coty of Local 282 stopped Active's Local 918 drivers and asked them to produce a Union book (A. 42, 56). Coty also told the Local 918 drivers, as well as Active's superintendent, Cohen, that the drivers were only to make a single drop of materials (A. 56, 65).

Also some time in April, the plumbers employed by Active at the site began using Active's jeep and jeep truck to carry them and their tools and materials around the site (A. 53-55). Thereafter, Coty asked Cohen several times, "Why don't you put on a 282 driver, so we won't have any problems on the site?" (A. 56).

In mid-May, Coty asked Active President Hirsch "Why don't you use 282 men on your vehicles and sign up with us?" Hirsch replied that he employed delivery drivers from Local 918 and that the plumbers were driving the jeep truck inside the job site and he had no intention of signing up with Local 282 (A. 36-37).

- b. Local 282 shifts the focus of its efforts from Active to Brady and attempts to cause Brady to force Active to hire a Local 282 member to drive its trucks - Active refuses to comply with Brady's suggestion that it hire a Local 282 member and sign a contract with Local 282

On May 21, Local 282's business agent, Edward McFarland, told Louis Ferrari, Brady's general superintendent, that Local 282 was going to put one of its members on Brady's payroll because Active would not put a Local 282 member on the plumbers' truck (A. 71). McFarland further stated that the man would report to work every day and that Brady would have to pay him until Active hired the man to drive the truck. Ferrari refused to agree to McFarland's demand (A. 71, 73-74). Between May 21 and June 15, a Local 282 member applied each work day for the job of driving Active's truck at the site, but Active never hired him (A. 74).

During the period between May 21 and July 1, Ferrari, on several occasions, told Active President Hirsch that Brady wanted Active to put a Local 282 member on Active's trucks and to sign an agreement with Local 282. Hirsch's response was that the plumbers' union (Local 1) would not allow a Teamster on the Truck (A. 41-42, 78-79). Also during this period, Ferrari spoke several times to the Local 1 business agent, Donald Sclafani, about putting a Local 282 member on the plumbers' truck and told him that he, Sclafani, should tell Active to sign with Local 282. Sclafani maintained that the plumbers considered the truck a "tool of the trade" and that the work of driving the truck belonged to the plumbers (A. 79, 97-98, 100).

At Ferrari's request, Sclafani met with Edward McFarland, Local 282's business agent, in early June (A. 98). During this meeting, McFarland told Sclafani that he would not abide by a 1971 Memorandum of Understanding between Local 282 and certain plumbers locals concerning this work. ^{7/} McFarland added that because of Local 282's agreement with Brady, "he could make Active sign an agreement through Brady" (A. 98-99).

^{7/} The 1971 Memorandum of Understanding was between Local 282 and Locals 1, 2, 371 and 457 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry. The agreement stated: "Pending the execution of a mutually satisfactory settlement, Teamster Local No. 282 will not interfere with members of U.A. Locals No. 1 - No. 2 - No. 371 - No. 457 and No. 775 who are driving trucks as employees of Contractors signatory to U.A. agreements" (A. 233-234).

- c. Local 282 engages in a work stoppage and pickets Brady at the J.F.K. site - Brady agrees to employ a Local 282 member to drive the Active truck but Active refuses to assign him to perform its driving work

On June 15th, Brady superintendent Ferrari received a telegram from Local 282 requesting him to attend a meeting of the Local 282-Building Contractors Association Joint Trade Board (herein "Trade Board") 8/ on June 16. At this meeting, Local 282 claimed that Brady should put a Local 282 member on Active's truck and pay 17 days back wages to the Local 282 member who had reported to work each day to drive Active's trucks. The Trade Board ruled that any on-site driving work, other than the first drop of materials, was to come under the terms of Brady's contract with Local 282. Accordingly, it ordered Brady to put a Local 282 member on Active's truck. The Trade Board refused to decide the issue of back wages (A. 74-76, 89).

Meanwhile, at 8:00 a.m. on June 16, all of Brady's truck drivers who are members of Local 282, including shop steward Coty, and Local 282 business agents Carbone and McFarland, set up a picket line in front of the gate at the J.F.K. site used by all employers with employees working at the site. The picket signs carried by the men stated "THIS STRIKE IS AGAINST JOHN T. BRADY AND COMPANY, LOCAL 282 IBT." The picketing continued from 8:00 a.m. to 3:30 p.m. on June 16. As a result of the picketing, Brady's other employees and the employees of Burmar and Novid refused to work (A. 37, 56-58, 65, 76-77).

8/ Section 13 of the Local 282 High-Rise Contract, to which Brady is signatory, provides for the establishment of the Trade Board to resolve disputes arising under the agreement between the union and signatory employers (A. 238). Brady is not a member of the Trade Board (A. 75).

After the Trade Board meeting on the 16th, Ferrari called Sclafani and told him that there was a picket line up and that he, Sclafani, "better tell Active to sign with Local 282" (A. 100). Ferrari also told Sclafani of the Trade Board meeting and the decision that a Local 282 member should be placed on the truck (A. 100-101).

Later on the same day, Ferrari called Robert Sasso, Local 282's Secretary-Treasurer, and told him that Brady would hire the Local 282 member who was reporting each day for the job of driving Active's truck at the site and that Brady would pay the man 17 days backpay. On hearing this, Sasso replied "OK, the strike is off." (A. 77-78).

The next day, Friday, June 17, Brady sent a letter to Active stating that Brady was charging Active for the cost of hiring the Local 282 member and for the 17 days back pay (A. 37, 78, 211). The same day, Local 282 steward Coty brought the man hired by Brady to Active's superintendent, Cohen, and asked Cohen what the man should do. Cohen, after checking with Sclafani, told Coty he would not use the man, that he felt the matter was a jurisdictional dispute and he could not help him settle it (A. 58-59).

On Friday, June 24, Local 282's Secretary-Treasurer, Sasso, telephoned Ferrari and told him that either a member of Local 282 must be assigned to drive the Active jeep truck on Monday, June 27, or Local 282 would strike the job site again. Ferrari requested that he be given until Wednesday, June 29, to effect an acceptable solution and Sasso agreed (A. 79-81).

Thereafter, on Monday, June 27, Brady sent a telegram to Active ordering Active to cease using the jeep truck at the J.F.K. site (A. 38, 213). Ferrari then filed an unfair labor practice charge with the Board's Regional

Office charging that Local 282 was violating Section 8(b)(4)(i)(ii)(D) of the Act by its attempts to force Brady to assign the driving work to Local 282 (A. 81, 232). The charge was subsequently withdrawn (A. 82).

The following morning, June 28, Local 282 officer Sasso contacted Ferrari and asked him "why did you go to N.L.R.B. instead of putting a Teamster on the truck?" Ferrari replied that he had gone to the Board on the advice of his attorney and employer. Sasso then told Ferrari "you are on strike" and hung up (A. 82-84).

A little later in the morning of June 28, Brady's three employees who are Local 282 members engaged in another work stoppage and set up a picket line in front of the gate used by all employers working at the site. The picket signs stated "J.T. BRADY UNFAIR, STRIKE, TEAMSTERS AND CHAUFFEURS 282" (Petitioner's Exhibits 11, 12). ^{9/} The picketing continued until 3:30 p.m. on June 28, and resumed between 8:00 a.m. and 3:30 p.m. on June 29, 30 and July 1. At all times during the picketing all the other employees of Brady and the employees of Burmar and Novid refused to work at the J.F.K. site (A. 40-41, 59, 85-87).

On June 30, Ferrari spoke with Sasso and told him that Brady was suspending the plumbing and that Ferrari wanted work to resume on July 1. Sasso replied that as long as the plumbing was suspended and no one was using the truck everybody else could go back to work (A. 86). Ferrari then contacted the Local 1 business agent and told him "you don't use the truck, the plumbers are allowed to work." The plumbers agent responded "No, they cannot go to work. So you suspend the plumbing contract." (A. 86-87).

^{9/} Petitioner's Exhibits 11, 12 are pictures of the picket signs that were posted at the gate. The pictures, although included in the record, are not reproduced in the Joint Appendix because of their poor quality.

Brady then directed Active to immediately suspend all work at the job site for three weeks (A. 231). After Active was removed from work at the site, the picketing ceased and all employees of Brady and the other subcontractors returned to work (A. 60-61). Thereafter, Active did not work at the site from July 1 until work was ordered resumed on July 21, pursuant to the orders of the court below issued on July 20 and July 26 (A. 41, 119).

C. The District Court's Findings, Conclusions and Order

On this record, the court below failed to find reasonable cause to believe that Local 282 was engaging in conduct violative of Section 8(b)(4)(B) of the Act, stating "I don't see how 8(b)(4)(B) is involved in this dispute at all" (A. 109). In so concluding, the court below apparently relied upon its finding that "Local 282 had a labor dispute with Brady" and that Local 282 was "not interested in getting Active off the job," but was only demanding "that Active can't transport from point to point within the job site material" (A. 156; 108-109).

The court below did conclude that there is reasonable cause to believe that Local 282 has engaged in, and is engaging in acts and conduct in violation of Section 8(b)(4)(i)(ii)(D) of the Act and that such acts and conduct will likely be repeated unless enjoined (A. 158, 159). Consequently, the court concluded that "to preserve the issues for the orderly determination as provided in the Act, it is appropriate, just and proper that, pending the final disposition of the matters herein involved pending before the Board," Local 282 be enjoined "from the commission, continuation or repetition" of its unlawful conduct and "be affirmatively ordered to take the action ordered as per the Temporary Injunction" (A. 158).

As part of its findings in regard to the Section 8(b)(4)(D) issue, the court found that the labor dispute was limited to

the failure of Brady and its subcontractor Active to employ members of Local 282 to drive trucks carrying construction supplies at the J.F.K. site from point to point within the job site. The dispute does not concern the carrying of tools or people used in plumbing work, nor does it concern the movement of supplies from outside the job site to a single delivery within the job site. 10/

(A. 156). The court then ordered that Local 282 cease and desist from engaging in proscribed conduct only where the object "is to force or require Brady or its subcontractor Active to assign the work of driving trucks at the J.F.K. site carrying materials from point to point within the job site to employees who are represented by Local 282 rather than to employees who are represented by Local 1" (A. 160).

Additionally, the court, exercising its equitable "power and position to modify and form the remedy which limits the h/arm to all parties as much as possible" (A. 148), affirmatively ordered:

that the use by Local 1 members of The Active Fire Sprinkler Corp.'s jeep and jeep truck on the J.F.K. jobsite for carrying materials shall be limited to the transportation of 25 pounds of lead and pipes of a length not exceeding 5 feet for each pipe in any one trip. Other material transported on-site by Active shall be transported either by 'cherry pickers' or by the use of a truck driven by a member of Local 282 (A. 160). 11/

10/ Thus, the court implicitly recognized that Local 282 was seeking the work of driving Active's delivery trucks if they made multiple drops within the J.F.K. site. See A. 110, 113, 116. Indeed, Local 282 counsel flatly so stated (A. 21-23, 111-112).

11/ The court, contrary to Local 282's assertions, found that the operation of the cherry picker was not legitimately within Local 282's contract claim (A. 117).

We submit that the court committed reversible error by: (1) failing to find reasonable cause to believe that Local 282's actions were violative of Section 8(b)(4)(i)(ii)(B) of the Act; (2) improperly limiting the scope of the injunction order in that the order fails to enjoin unlawful attempts by Local 282 to obtain the work of driving delivery trucks making multiple drops within the jobsite presently performed by members of Local 918 and other employees; and (3) by directing the assignment of the disputed work pending the Board's resolution of the matter.

ARGUMENT

I. THE STATUTORY SCHEME PURSUANT TO WHICH INJUNCTIVE RELIEF WAS SOUGHT: THE APPLICABLE STANDARDS

Section 10(1) ^{12/} of the Act empowers district courts to grant "just and proper" injunctive relief pending the Board's resolution of unfair labor practice charges made subject to its provisions. In brief, Section

12/ Insofar as pertinent, Section 10(1) provides as follows:

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 8(A), (B), or (C) of Section 8(b), or Section 8(e), or Section 8(b)(7) the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or the regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * * Upon filing of any such petition the court shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: * * *

(CONTINUED)

10(1) embodies the determination of Congress that certain unfair labor practices enumerated therein -- e.g. secondary boycotts, threats and inducements in furtherance of jurisdictional disputes and certain recognitional picketing -- give or tend to give rise to such serious interruptions to commerce as to require their discontinuance, pending adjudication by the Board on the merits, to avoid irreparable injury to the policies of the Act and the frustration of the statutory purpose which would otherwise result. S. Rep. No. 105, 80th Cong., 1st Sess., pp. 8, 27, I Legislative History of the Labor Management Relations Act, 1947, 414, 433 (G.P.O., 1948); Danielson v. Joint Board of Coat, Suit & Allied Garment Workers Union, 494 F.2d 1230 at 1241-1242 (C.A. 2, 1974); Hirsch v. Building & Construction Trades Council, 530 F.2d 298, 302 (C.A. 3, 1976); Squillacote v. International Brotherhood of Teamsters, Local 344, 561 F.2d 31, 35 (C.A. 7, 1977). Therefore, Section 10(1) imposes a mandatory duty, in the case of secondary boycotts and recognitional picketing, and confers discretion, in the case of jurisdictional disputes, upon the Board's regional director to seek injunctive relief in the appropriate district court upon reasonable belief that a violation has occurred.

12/ (CONTINUED)

In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to Section 8(b)(4)(D).

Since injunctive proceedings under Section 10(1) of the Act are ancillary to the main unfair labor practice case, and any injunction issued thereunder is interlocutory in nature and expires upon the Board's rendering its final decision, Sears, Roebuck & Co. v. Carpet, Linoleum, etc., Layers Local Union 419, 397 U.S. 655, 658-659 (1970), ". . . it is well settled that the district court need not decide that an unfair labor practice has actually occurred but merely must decide whether the Board has reasonable cause to believe there has been a violation of the Act." Danielson v. International Organization of Masters, Mates & Pilots, AFL-CIO, 521 F.2d 747, 751 (C.A. 2, 1975); Seeler v. Trading Port, Inc., 517 F.2d 33, 36 (C.A. 2, 1975), and cases there cited; ^{13/} Kaynard v. Independent Routemen's Association, 479 F.2d 1070, 1072 (C.A. 2, 1973). Rather, "the Regional Director faces a relatively insubstantial burden of proof when he petitions a district court for temporary injunctive relief pursuant to Section 10(1)." Hirsch v. Building & Construction Trades Council, supra, 530 F.2d at 302; Squillacote v. Graphic Arts International Union, 540 F.2d 853, 858 (C.A. 7, 1976). In the latter case, the Seventh Circuit reiterated that "the evidence need not establish a violation. It is sufficient . . . if there be any evidence which together with all the reasonable inferences that might be drawn therefrom supports a conclusion that there is reasonable cause to believe a violation has occurred." Ibid.

As this Court has stated (Danielson v. Joint Board of Coat, Suit & Allied Garment Workers Union, supra, 494 F.2d at 1245):

^{13/} Seeler v. Trading Port arose out of a Section 10(j) proceeding. However, as this Court observed, 517 F.2d at 36, n. 5, in this circuit, "the district court should apply the same standards in Section 10(1) cases as it does in Section 10(j) cases." See also Danielson v. Joint Board, supra, 494 F.2d at 1242.

When 'reasonable cause to believe' turns on disputed issues of fact, the Regional Director may assume these in favor of the charge and the district court should sustain him if his choice is within the range of rationality. If differing inferences may fairly be drawn from the facts he has found, he may choose the one more favorable to the charging party, and this too should be upheld.

Indeed, this Court has held that where "there are disputed issues of fact . . . , the Regional Director should be given the benefit of the doubt" Seeler v. Trading Port, Inc., supra, 517 F.2d at 36-37. Accord: Danielson v. International Organization of Masters, Mates & Pilots, AFL-CIO, supra, 521 F.2d at 751; Squillacote v. Graphic Arts International Union, supra, 540 F.2d at 858-859. In short, the

standard of "reasonable cause" is satisfied if there is a showing of factual issues which must be resolved by the Board. Section 10(1) commands the courts to disregard their traditional reluctance to issue preliminary injunctions when there is substantial conflict in the evidence.

Wilson v. Milk Drivers and Dairy Employees Union, Local 471, 491 F.2d 200, 203 (C.A. 8, 1974).

While, in disagreement with other courts of appeals, this Court held in Danielson v. Joint Board, supra, that the "reasonable cause" standard requires a showing of "at least some significant possibility that the Board will enter an enforceable order," 494 F.2d at 1244, and that in cases involving novel legal theories, the district court should not grant an injunction if, "after full study, the district court is convinced that the General Counsel's legal position is wrong," Id., at 1245, ^{14/} it is clear that the Court did not intend to depart from the otherwise settled rule in this and other circuits that "the Board, rather than the district courts, remains the 'primary fact finder' and 'primary interpreter of the statutory scheme,' subject to judicial review by a court of appeals pursuant

^{14/} As this Court recognized, the standard generally applied is that the Regional Director's factual allegations and propositions of law must not be "insubstantial and frivolous." 494 F.2d at 1230-1240.

to Section 10(e) and (f)." McLeod v. National Maritime Union of America, AFL-CIO, 457 F.2d 490, 494 (C.A. 2, 1972); McLeod v. National Maritime Union of America, AFL-CIO (Commerce Tankers), 457 F.2d 1127, 1133 (C.A. 2, 1972).

Nor did the Court issue an open invitation to the district courts to make independent determinations of what the law should be. Rather, the decisions of this Court make it clear that mere disagreement of the district court with the Board's position, or even outstanding judicial decisions which are adverse to that position, do not alone negate "reasonable cause." McLeod v. National Maritime Union (Commerce Tankers), supra, 457 F.2d at 1137-1139, cited with approval in Seeler v. Trading Port, supra, 517 F.2d at 36; Keynard v. Independent Routemen's Association, supra, 479 at 1072; McLeod v. A.F.T.R.A., 234 F. Supp. 832, 833 (D.C. S.D.N.Y., 1964), aff'd. 351 F.2d 310 (C.A. 2, 1965). Indeed, this Court has emphasized that even where the proposition of law advanced by the Board is unsettled or is one of first impression, "the district court should be hospitable to the views of the Regional Director, however novel," Danielson v. Joint Board of Coat, Suit & Allied Garment Workers Union, supra, 494 F.2d at 1245, and "should defer to the statutory construction urged by the Board." Danielson v. International Organization of Masters, Mates & Pilots, AFL-CIO, supra, 521 F.2d at 751. Accord: Squillacote v. Graphic Arts International Union, supra, 540 F.2d at 858; Kennedy v. Los Angeles Typographical Union No. 174, 418 F.2d 6, 8 (C.A. 9, 1969); Humphrey v. International Longshoremen's Association, AFL-CIO, 548 F.2d 494, 498 (C.A. 4, 1977).

With respect to appellate review of Section 10(1) injunctions granted by the district court, this Court has held that the district court's conclusions respecting the existence of reasonable cause are reviewable under

the standard of whether they are "correct," and that its exercise of discretion in fashioning a "just and proper" remedy is reviewable under the standard of whether the district court abused its discretion. Danielson v. Joint Board, etc., supra, 494 F.2d at 1244 and n. 22.

However, because of the Congressional policy favoring the granting of Section 10(1) injunctions in the public interest, the scope of review of a district court's denial of injunctive relief is not so limited. McLeod v. National Maritime Union, supra, 457 F.2d at 1133-1134; Local 83, Construction Drivers Union v. Jenkins, 308 F.2d 516, 517, n. 1 (C.A. 9, 1962); Brown v. Pacific Telephone & Telegraph Co., 218 F.2d 542, 544 (C.A. 9, 1955) and Judge Pope's concurring opinion at 544-545; Wilson v. Milk Drivers, Local 471, supra, 491 F.2d at 204; Boire v. Teamsters, 479 F.2d 778, 793, n. 15 (C.A. 5, 1973).

We will show below that the district court misconceived the applicable law in concluding that Section 8(b)(4)(B) of the Act was not involved in this case because Local 282 was not interested in causing Brady to cease doing business with Active, but was only interested in seeing that Local 282 members performed the work in dispute under its contract with Brady (A. 108-109). Rather, we will demonstrate that under well-settled principles relating to secondary boycotts, the record clearly establishes that there is reasonable cause to believe that Local 282's conduct was violative of the proscriptions of Section 8(b)(4)(i)(ii)(B) of the Act and that temporary injunctive relief is just and proper. Finally, we will show that the court abused its discretion in framing its order granting preliminary injunctive relief from the Section 8(b)(4)(D) violation.

**II. THE COURT BELOW ERRED IN FAILING TO FIND REASONABLE
CAUSE TO BELIEVE THAT LOCAL 282 VIOLATED SECTION
8(b)(4)(i)(ii)(B) OF THE ACT**

A. Applicable Principles of Law

Section 8(b)(4)(i)(ii)(B) of the Act provides:

(b) It shall be an unfair labor practice for a labor organization or its agents --

* * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to . . . transport, or otherwise handle . . . any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * *

Commonly referred to as the "secondary boycott" provisions, this statutory proscription was originally enacted as part of the 1947 Taft-Hartley Amendments to the National Labor Relations Act, and first appeared as Section 8(b)(4)(A) of the Act, as so amended. In substance, the original Section 8(b)(4)(A) forbid a union to induce employees of one employer, with whom the union has no dispute (the "secondary" or "neutral" employer), to engage in a strike against that employer with an object of forcing him to cease doing business

with another party with whom the union has a dispute (the "primary" employer). The provision reflected "the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from controversies not their own." N.L.R.B. v. Denver Building & Construction Trades Council, 341 U.S. 675, 692 (1951); National Woodwork Manufacturers Association v. N.L.R.B., 386 U.S. 612, 620-627 (1967); N.L.R.B. v. Local 825, Operating Engineers (Burns & Roe), 400 U.S. 297, 302-303 (1971).

Thus, Section 8(b)(4)(A) did not prohibit a union from taking traditional primary action against an employer in furtherance of a labor dispute with that employer, for example, by appealing directly to his employees, by picketing or otherwise, not to perform services for him. It did, however, prohibit a union from bringing pressure to bear on the primary employer indirectly by exerting pressure on another, "secondary" employer in furtherance of its primary dispute. See generally, N.L.R.B. v. Denver Building & Construction Trades Council, *supra*; International Brotherhood of Electrical Workers, Local 501 v. N.L.R.B., 181 F.2d 34, 37 (C.A. 2, 1950), *aff'd*. 341 U.S. 694 (1951); National Woodwork Manufacturers Association v. N.L.R.B., *supra*, 386 U.S. at 626; Burns & Roe, *supra*, 400 U.S. at 302-303.

In 1948, the Supreme Court issued its landmark decision in Local 1976, Carpenters v. N.L.R.B. (Sand Door), 357 U.S. 93 (1958), holding that Section 8(b)(4)(A) outlawed only coercive measures taken by a union to force a neutral (secondary) employer to engage in a secondary boycott, and that "[a] boycott voluntarily engaged in by a secondary employer . . . is not covered by the statute." 357 U.S. at 98-99. Accordingly, the Court held that Congress did not intend to prohibit an employer and a union from

entering into an agreement whereby the employer agrees to boycott (cease or refrain from doing business with) another employer with whom the union has a dispute (a "hot cargo" agreement). In particular, the Court stated that "a voluntary employer boycott does not become prohibited activity simply because a hot cargo clause exists." Id., at 107.

However, in so holding, the Court emphasized that "the inducements of employees that are prohibited under Section 8(b)(4)(A) in the absence of a hot cargo provision are likewise prohibited when there is such a provision," Id., at 106, and "the contract cannot be enforced by the means specifically prohibited in Section 8(b)(4)(A)." Id., at 108. In short, the Sand Door case established that, under existing law, while a hot cargo agreement was not itself unlawful, it is an employer's voluntary compliance with such an agreement would not violate Section 8(b)(4)(A) of the Act, a union's picketing to enforce a hot cargo agreement remained subject to the proscriptions of that Section.

Perceiving this decision as disclosing a "loophole" in the existing secondary boycott provisions, in 1959 Congress again amended the Act to add what is now Section 8(e), ^{15/} declaring hot cargo agreements themselves to be unlawful and unenforceable. See generally, National Woodwork Manufacturers Association v. N.L.R.B., supra, 386 U.S. at 634; N.L.R.B. v.

^{15/} Section 8(e) provides:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void.

Fruit and Vegetable Packers and Warehousemen, Local 760 (Tree Fruits), 377 U.S. 58, 64 (1964). As the District of Columbia Circuit has succinctly stated, Section 8(e) "makes it an unfair labor practice to enter into an agreement whereby an employer agrees to engage in secondary activities such as refusing to handle struck or nonunion goods of another employer or to cease doing business with any other person." Drivers, Salesmen, Warehousemen, Local 695 v. N.L.R.B., 361 F.2d 547, 549 (1966). At the same time, Section 8(b)(4) was amended and renumbered, so that subparagraph (A) now makes it unlawful for a union to engage in a strike or other coercive conduct to force an employer to enter into a hot cargo agreement, and the former Section 8(b)(4)(A) now appears, with certain modifications, as Section 8(b)(4)(B). ^{16/}

As the Supreme Court explained in National Woodwork, supra, 386 U.S. at 633-634, Section 8(e) was designed to implement and reinforce the existing proscriptions against secondary boycotts contained in Section 8(b)(4) of the Act by prohibiting a union from achieving an unlawful secondary boycott through an agreement with the boycotting employer. The Court observed that Congress intended that Section 8(e) would embody the same distinction made in Section 8(b)(4) between lawful "primary" and unlawful "secondary" boycott activity, and would apply only to agreements having "'secondary' objectives." Id., at 620, 623-639. Accordingly, in examining contractual provisions under Section 8(e), the Court stated "the touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer vis-a-vis his own employees." Id., at 644-645. Thus, a contract

^{16/} As amended, Section 8(b)(4)(B) now proscribes union threats, coercion and restraints against the neutral employer for a proscribed "cease doing business" object, as well as inducements of employees in furtherance of such an object.

clause is a lawful "primary" clause if it is intended for the direct benefit of the employees in the immediate bargaining unit, but it is a "secondary" clause, and unlawful, if it is "tactically calculated to satisfy union objectives elsewhere," i.e., to aid union members generally. Id., at 645.

Therefore, while a union and an employer may lawfully enter into an agreement having the valid primary purpose of protecting the jobs of the employees in the immediate work unit of the contracting employer ("work preservation" agreements), they may not enter into an agreement whose thrust is to reach beyond the confines of the bargaining unit to affect the terms and conditions of another employer. Such agreements are secondary in design and impact, for they are not limited to the "labor relations of the contracting employer vis-a-vis his own employees," but are "tactically calculated to satisfy union objectives elsewhere," and are proscribed by Section 8(e). See, e.g., McLeod v. National Maritime Union (Commerce Tarkers), supra, 457 F.2d at 1134.

As the Board aptly explained in Retail Clerks Local Union No. 1288 (Nickel's Pay-Less Stores), 163 NLRB 817, 818-819 (1967), enf'd. in pertinent part, 390 F.2d 858, 861-62 (D.C. Cir., 1968):

It is well settled that contract clauses which restrict the performance of unit work, or at least fairly claimable unit work, to unit members in the employ of the contracting employer are not violative of Section 8(e). Such provisions "seek to protect the wages and job opportunities of the employees covered by the contract" and are "germane to the economic integrity of the principal work unit." These clauses are considered primary even though they may have the incidental effect of causing the employer to cease doing business with other persons. The same is true of clauses which allow the employer to subcontract unit work only to other employers who maintain union standards. On the other hand, contract provisions are secondary and unlawful if they are to have as their principal objective the regulation of the labor policies of other employers and not the protection of the unit. Typical of such proscribed provisions are those which limit subcontracting to employers who recognize the union or who are signatory to a contract with it. (Footnotes omitted, emphasis added).

The latter clauses, known as "union signatory" clauses, by their very terms have a "secondary focus" since they do not relate to the work of employees in the contractual bargaining unit but further union interests generally. As such, the clauses run afoul of Section 8(e) of the Act. See N.L.R.B. v. National Maritime Union, 486 F.2d 907, 912-913 (C.A. 2, 1973), cert. denied 416 U.S. 970; Danielson v. International Organization of Masters, Mates and Pilots, *supra*, 521 F.2d at 752; Orange Belt District Council of Painters No. 48 v. N.L.R.B., 328 F.2d 534, 538-539 (C.A. D.C., 1964); N.L.R.B. v. Milk Driver's Union, Local 753, 392 F.2d 845, 849 (C.A. 7, 1968); Operating Engineers Local 12, 204 NLRB 742, 751, and cases cited at n. 27 (1973), *enf'd.*, as modified in other respects, *sub nom* Acco Construction Equipment, Inc. v. N.L.R.B., 511 F.2d 1194 (C.A. 9, 1975).

To be sure, in recognition of the "close community of interests" of workers on a construction site, Congress enacted a limited exemption from the proscriptions of Section 8(e) for the construction industry, generally referred to as the "construction industry proviso." Under this proviso, a union and an employer engaged in the construction industry may enter into a "union signatory" subcontracting agreement; that is, they may agree, within certain limitations, that the contracting employer will not contract for the performance of work to be done at the construction site - i.e., will cease or refrain from doing business - with an employer who is not himself signatory to a collective bargaining agreement. However, the legislative history of the 1959 amendments makes clear that Congress did not intend the proviso to alter the Supreme Court's holding in Sand Door that even permissible hot cargo agreements may only be enforced by law suits, and not by economic pressures. See H. Rep. No. 1147, pp. 39-40, I Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 943-944 (G.P.O., 1959).

Accordingly, the courts, including this Court, have uniformly held that hot cargo agreements protected by the construction industry proviso to Section 8(e) may only be enforced through judicial action; economic pressure, e.g., strikes or picketing, to enforce such clauses violates Section 8(b)(4)(B) of the Act, as amended. See, e.g., N.L.R.B. v. Local 445, International Brotherhood of Teamsters, etc., 473 F.2d 249, 253 (C.A. 2, 1973); Local 644, Carpenters v. N.L.R.B., 533 F.2d 1136, 1145-1146 (C.A. D.C., 1975); Acco Construction Equipment, Inc. v. N.L.R.B., *supra*, 511 F.2d at 852; N.L.R.B. v. IBEW Local 769, Muskegon Bricklayers Union No. 5, 378 F.2d 859, 861-864 (C.A. 6, 1967); Sheet Metal Workers, Local 48 v. Hardy Corp., 332 F.2d 682, 686 (C.A. 5, 1964); Orange Belt District Council of Painters No. 48 v. N.L.R.B., *supra*, 328 F.2d at 537-538. This established statutory construction was recently acknowledged and affirmed by the Supreme Court in N.L.R.B. v. Enterprise Association & General Pipefitters, Local 638, 429 U.S. 507, 517 (1977).

B. Local 282 Threatened To Picket And Picketed Brady In Violation Of Section 8(b)(4)(i)(ii)(B) Of The Act

Applying the principles set forth above to the facts in the instant case, there is at the very least reasonable cause to believe that Local 282 has violated Section 8(b)(4)(B) of the Act by picketing Brady in furtherance of its labor dispute with Active.

Initially, it is clear that Local 282 threatened and picketed Brady to force Brady to abide by the terms of Section 9 of its collective bargaining agreement. In fact, counsel for Local 282 flatly asserted that "t/he objective of Local 282 was only to have compliance with the terms and conditions of that contract" (A. 21-22, 111).

Just as clearly, however, Section 9 of Local 282's contract has a secondary rather than a lawful, primary focus. Thus, read in its entirety, Section 9 provides, in essence, that Brady may subcontract the work of driving trucks from one point to another on the construction site only to employers who are also parties to or bound by the agreement with Local 282. Indeed, Local 282 conceded that this is the meaning and intent of the clause (A. 21, 22, 107, 111), and the Trade Board so interpreted it (A. 22, 89). Of course, as shown above, pp. 27-28, this "union signatory" subcontracting clause is simply the embodiment of an agreement by Brady, a neutral employer,^{17/} to engage in a secondary boycott of those employers with whom Local 282 has a dispute - i.e., employers, like Active, who do not have a contract with Local 282. It is obvious that, in this context, Local 282's avowed purpose of "enforcing the contract" simply meant requiring Brady either to compel Active to employ a Local 282 member to operate its trucks on the job site and "sign up" with Local 282 or to terminate its subcontract - i.e., literally "cease doing business" - with Active, a plainly unlawful, secondary object. And, indeed, the record fully establishes that this was precisely the purpose and effect of Local 282's threats and picketing.

As shown in the Statement of Facts, Active commenced work ~~at the~~ J.F.K. site in March, 1977. When Active's supplier began making multiple drops of materials at the site, Local 282 immediately objected that the drivers could make only a single drop. Active's resistance to this demand prompted Local 282 business agent Carbone to warn Active that although Local 282 "couldn't do anything to Active" it could "get" Brady. Supra, p. 9.

^{17/} As Brady's superintendent Ferrari testified, Brady "never had a dispute with Local 282" (A. 76).

Similarly, when Active assigned to members of Local 918 the work of driving its trucks to make multiple drops of materials at the site and assigned to members of Local 1 the work of driving its jeep and jeep truck on the site, Local 282 insisted that the on-site truck driving work should be performed by its members and repeatedly demanded that Active hire a Local 282 member and sign an agreement with Local 282. When Active refused to reassign the work and sign an agreement with Local 282, Local 282 did, as threatened, shift the focus of its pressures from Active to Brady. Supra, pp. 9-10.

Thus, in May, Local 282 insisted that Brady hire a Local 282 member to drive Active's vehicles until Active agreed to employ him. Thereafter, a Local 282 member applied for employment daily until June 15. Under the pressure of Local 282's demand, Brady made repeated efforts to persuade Active to employ the Local 282 member and to sign an agreement with Local 282. Active and Local 1 business agent Sciafani adamantly refused to comply, firmly asserting that the driving work was properly assigned to Active's plumber employees. Supra, pp. 10-11.

In early June, Local 282 expressly warned Sciafani that because of Local 282's agreement with Brady, Local 282 "could make Active sign an agreement through Brady" (supra, p. 11). Any doubts regarding the implications of this threat were soon resolved. For, on June 16, Local 282 brought Brady's asserted contract violation to the Trade Board for a ruling, and simultaneously struck and picketed Brady at the construction site. The picketing induced Brady's employees and the employees of subcontractors Burmar and Novid to refuse to work at the site. In the face of these work stoppages, Brady was forced to capitulate to Local 282's demands. Accordingly, Brady agreed to hire a Local 282 member to drive Active's trucks and

to pay him for each day he had reported to work. Local 282 immediately ceased picketing and terminated the strike. Supra, pp. 11-13.

Active, however, refused to allow the Local 282 member to drive its trucks or to absorb his wages. Local 282 then threatened Brady that if a Local 282 member was not assigned to Active's trucks, Brady again would be struck. Despite Brady's urgent appeal, Active refused to submit to Local 282's demands and continued having members of Local 1 drive the truck from one location on the site to another. As promised, on June 28, Local 282 resumed its strike and picketing of Brady. Supra, pp. 13-14.

Once again, Brady was forced to yield under the strike pressure; and, when Local 1's business agent refused Brady's suggested alternative that the plumbers stop using Active's jeep truck, Brady suspended Active's plumbing contract. Upon Active's removal from the job site, Local 282 ceased picketing and all the employees of Brady and the other subcontractors returned to work. Active was not restored to the job until the district court issued its temporary restraining order on July 20. Supra, pp. 14-15.

In short, Local 282 twice struck and picketed Brady, thereby inducing employees of Brady, Burmar and Novid to engage in a work stoppage, and coercing and restraining Brady, for the prohibited object of forcing Brady to cease doing business with Active, with whom Local 282 had a labor dispute. Such conduct was a classic example of an unlawful secondary boycott in direct violation of Section 8(b)(4)(i)(ii)(B) of the Act. See, e.g., Burns & Roe, supra, 400 U.S. at 302-303; Denver Building & Construction Trades Council, supra; National Woodwork, supra, 386 U.S. at 644-645.

Of course, it is well settled that even if the principal object of Local 282's conduct was not to force Brady literally to "cease doing business"

with Active but merely to induce Active to assign the work of driving the jeep truck to members of Local 282 rather than to members of Local 1, as the court below found (A. 108-109), ^{18/} the picketing was no less violative of Section 8(b)(4)(B). Burns & Roe, supra, 400 U.S. at 304-305. As this Court has observed, "the purpose of a secondary boycott need not be total cessation of business to violate the Act. A . . . work stoppage of a neutral employer for the purpose of effecting a change in work assignment of the primary employer is a violation of Section 8(b)(4)(ii)(B)." N.L.R.B. v. Local 3, International Brotherhood of Electrical Workers, 467 F.2d 1158, 1160 (C.A. 2, 1972). ^{19/}

Nor does the fact that 282's activities were designed to enforce Section 9 of the collective bargaining agreement with Brady convert the picketing to lawful, primary conduct, as the court below apparently found. For, as shown above, p. 30, Section 9 of that agreement constitutes a secondary, "union signatory" clause which, under the terms of Section 8(e) of the Act, is void and unenforceable. Moreover, even assuming, arguendo, that the clause is protected by the construction industry proviso to Section 8(e), ^{20/}

^{18/} In fact, however, Local 282's conduct caused an actual cessation of business, at least temporarily. See p. 15, supra.

^{19/} The mere fact that Local 282's secondary boycott was in support of its work jurisdiction claim and, thus, violative of Section 8(b)(4)(D) does not preclude a violation of Section 8(b)(4)(B). As the Supreme Court has stated, a union's conduct can be violative of both sections, for "there is no indication that Congress intended either section to have exclusive application." Burns & Roe, supra, 400 U.S. at 306. Accord: N.L.R.B. v. Local 282, International Brotherhood of Teamsters, 344 F.2d 649, 652 (C.A. 2, 1965); Building Material & Construction Teamsters Local 216 v. N.L.R.B. (Bigge Drayage Co.), 520 F.2d 172, 180 (C.A. D.C., 1975).

^{20/} The Board takes no position in this proceeding on whether Section 9 of Local 282's collective bargaining agreement falls within the protection of the construction industry proviso. The particular clause is currently the subject of another Board proceeding in Board Case No. 29-CE-37, 38. And see Connell Construction Co. v. Plumbers Local 100, 421 U.S. 616 (1975) and NLRB General Counsel's Memorandum on Connell, G.C. Memo 76-75 (December 15, 1976), reprinted in 1976 Labor Relations Yearbook, 295 et seq. (BNA, 1976).

as previously explained, the law is abundantly clear that a union may seek to vindicate its rights under such an agreement only through the courts, and a resort to picketing to compel compliance violates Section 8(b)(4)(B) of the Act. See the discussion and cases cited supra, pp. 28-29.

III. THE COURT BELOW IMPROPERLY LIMITED THE SCOPE OF ITS ORDER ENJOINING THE UNION FROM ENGAGING IN CONDUCT VIOLATIVE OF SECTION 8(b)(4)(D) AND IMPROPERLY INCLUDED IN THE INJUNCTION AN ORDER DIRECTING THE ASSIGNMENT OF THE DISPUTED WORK

A. The District Court Was Correct In Finding Reasonable Cause To Believe Local 282 Violated Section 8(b)(4)(D) Of The Act

Section 8(b)(4)(D) of the Act, provides:

8(b) It shall be an unfair labor practice for a labor organization or its agents --

* * *

(4)(i) to engage, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to . . . perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

* * *

This provision was enacted to "protect employers and the public from the detrimental economic impact of 'indefensible' jurisdictional strikes" (N.L.R.B. v. Plasterers' Union, 404 U.S. 116, 131 (1971)) -- that is, strikes, or threats and inducements thereof, in support of "disputes between two or

or more employee groups claiming the right to perform certain work tasks." N.L.R.B. v. Radio & Television Broadcast Engineers (CBS), 364 U.S. 573, 575-576 (1961). Thus, under the provisions of Section 8(b)(4)(D), it is an unfair labor practice for a labor organization to encourage or induce employees of any person engaged in commerce to engage in a work stoppage, or to threaten, coerce or restrain any employer or other person, where an object of that conduct is to force or require any employer to assign work to one group of employees rather than to another. The sole exception to this proscription exists where an employer is failing to honor a Board order or certification covering the work in dispute. N.L.R.B. v. Plasterers' Union, supra, 404 U.S. at 123; Local 450 Operating Engineers v. Elliot, 256 F.2d 630, 635 (C.A. 5, 1958); Highway Truck Drivers & Helpers, Local 701 (Safeway Stores, Inc.), 134 NLRB 1320, 1322 (1961).

The district court's finding, from which Local 282 has not appealed, that there is reasonable cause to believe that Local 282 violated Section 8(b)(4)(D) of the Act, is amply supported by the record. Thus, Local 282 claimed the right to perform the work of driving trucks transporting materials from one location on the job site to another, and attempted to cause Active to assign the work to Local 282 members rather than to employees represented by Local 1 or Local 918. When Active would not accede to its demands, Local 282 picketed the job site on June 16 and again from June 28 through July 1 with the proscribed purpose of forcing and requiring Active to reassign the work to its members.

Deeming it likely that Local 282 would repeat its unlawful conduct unless enjoined, the court concluded that "to preserve the issues for the orderly determination as provided in the Act, it is appropriate, just and proper

that, pending the final disposition of the matters herein involved pending before the Board," Local 282 be enjoined "from the commission, continuation or repetition" of its unlawful conduct. Accordingly, the court issued its injunctive order.

B. The Court Improperly Limited The Scope Of Its Order

As this Court has observed, the purpose of a Section 10(1) injunction is to prevent unfair labor practices and to preserve the status quo pending final Board action. McLeod v. National Maritime Union, *supra*, 457 F.2d at 496. Accord: Compton v. National Maritime Union of America, AFL-CIO, 533 F.2d 1270, 1276 (C.A. 1, 1976); Henderson v. International Union of Operating Engineers, Local 701, 420 F.2d 802, 808-809 (C.A. 9, 1969). Thus, underlying every such injunction proceeding is the need for an order effectively precluding that activity which runs afoul of the Act. McLeod v. Chefs, Cooks, Pastry Cooks, Local 89, 280 F.2d 660 (C.A. 2, 1960). The outstanding order fails to accomplish this end.

Apparently concluding that Local 282's work jurisdiction claim was limited to the driving work then being performed by Active's plumbing employees represented by Local 1 (A. 157), the court narrowly tailored its order to enjoin Local 282 from engaging in proscribed conduct only for the limited object of obtaining that work. We submit that the court's finding that Local 282's object was so limited is clearly erroneous, and that the court committed reversible error in failing also to enjoin attempts by Local 282 to obtain for its members the work of driving Active's and its suppliers' trucks making multiple drops of materials on the jobsite, work being performed by employees who are represented by Local 918 or who are unrepresented.

Concedely, Local 282's work jurisdiction claim was in part specifically directed to the work of driving Active's jeep truck on the site, work assigned by Active to members of Local 1. However, the record clearly reflects that, in reliance on Section 9 of its contract with Brady, Local 282 also sought to obtain the work of driving delivery trucks on the job site, other than single drop deliveries, in contravention of other employees' claim to that work and Active's right freely to assign the work to whichever group of employees it desired.

Thus, incidents beginning in March and continuing until July 1 plainly involved assertions by Local 282 of its jurisdiction to drive delivery trucks making multiple drops on the J.F.K. job site. Supra, pp. 9-10. Moreover, this was the position Local 282 advanced before the Trade Board, and counsel for Local 282 characterized the Trade Board's decision as correctly holding that "any work on the jobsite had to come, other than the first drop, under the terms and conditions of the [Local 282] contract" (A. 21-22, 23, 89, 111-112, 117). ^{21/} Indeed, as noted above, p. 16, n. 10, 11, the district court implicitly recognized that this was Local 282's claim.

Local 282 has never indicated an intention to relinquish its claim to perform all on-site truck driving work, other than single drop deliveries (A. 21-23, 117). Therefore, to prevent Local 282 from engaging in renewed picketing and to preserve the status quo pending the Board's resolution of the dispute, it is proper that the injunctive order be broadened to encompass unlawful attempts by Local 282 to obtain any such work, regardless of which group of employees is currently performing it.

^{21/} Even assuming that Local 282 has a contractual claim to the work, "this would not make the dispute any less a jurisdictional dispute within the meaning of Section 8(b)(4)(D)." Henderson v. International Union of Operating Engineers, supra, 420 F.2d at 807.

Accordingly, we submit that the district court's order should be modified to enjoin Local 282 from engaging in conduct described in Section 8(b)(4)(i) and (ii) of the Act where "an object is to force or require Brady or its subcontractor Active to assign the work of driving trucks at the J.F.K. site carrying materials from point to point within the jobsite to employees who are represented by Local 1, Local 918 or by any other labor organization or who are not represented by any labor organization."

C. The Court Below Improperly Included In Its Injunction An Order Directing The Assignment Of The Disputed Work

In exercising its perceived equitable "power and position to modify and form the remedy which limits the /h/arm to all parties as much as possible" (A. 148), the district court included in its injunction order a directive that (A. 160):

the use by Local 1 members of the Active Fire Sprinkler Corp.'s jeep and jeep truck on the J.F.K. jobsite for carrying materials shall be limited to the transportation of 25 pounds of lead and pipes of a length not exceeding 5 feet for each pipe in any one trip. Other material transportated /sic/ on-site by Active shall be transported either by 'cherry pickers' or by the use of a truck driven by a member of Respondent /Local 282/.

Contrary to the approach taken by the court below, Section 10(1)'s grant of jurisdiction to the district courts to provide "such injunctive relief . . . as it deems just and proper" cannot be interpreted as conferring on the district court discretion to fashion orders to satisfy purposes other than the limited ones for which Section 10(1) was enacted. As reflected in the legislative history, in enacting Section 10(1) of the Act, Congress intended to carve out a narrow exception to the anti-injunction provisions of the Norris-LaGuardia Act (29 U.S.C. Sections 101-115), by restoring to the federal district courts jurisdiction to issue labor injunctions, but only

against conduct defined in the National Labor Relations Act as unfair labor practices, and then only "in the public interest, and not in vindication of purely private rights." I Legislative History of the Labor Management Relations Act 947, supra, 414. Consequently, only the Board was empowered to petition for such relief and, in doing so, acts, not on behalf of the private interests of employers, unions or specific employees, but in furtherance of the federal labor policies embodied in the Act. See, e.g., Henderson v. International Union of Operating Engineers, supra, 420 F.2d at 807.

Moreover, as the Tenth Circuit observed in a Section 10(1) proceeding, "when an exception to [the Norris - LaGuardia] Act, such as is here involved, is relied upon to support the jurisdiction of the court, the language employed to articulate that exception will not be given any more expansive an interpretation than is clearly warranted." Sears, Roebuck & Co. v. Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local No. 419, 410 F.2d 1148, 1150 (1969), vacated for mootness, 397 U.S. 655. Therefore, relief which plainly attempts to achieve ends other than those which can fairly be said to effectuate the purposes and policies of the Act, no matter how equitable they may otherwise appear, is inappropriate in Section 10(1) proceedings. Compton v. National Maritime Union, supra, 533 F.2d at 1276; Potter v. Houston Gulf Coast Building Trades Council, 363 F. Supp. 1, 7 (S.D. Tex., 1972), aff'd, as modified in other respects, 482 F.2d 837 (C.A. 5, 1973).

We submit that the affirmative portion of the order quoted above reaches beyond the intended scope of Section 10(1) and is inconsistent with the statutory scheme established for resolving work jurisdiction disputes.

Briefly stated, unlike the statutory procedure governing other unfair labor practice charges -- where a complaint is issued and an unfair labor

practice proceeding is immediately instituted upon the filing of a meritorious charge (Section 10(b) of the Act) -- upon the filing of a charge alleging a violation of Section 8(b)(4)(D), the Board is required to suspend proceedings on the charge pending its resolution of the underlying jurisdictional dispute. Labor Board v. Radio & Television Broadcasting Engineers Union, Local 1212 (CBS), 364 U.S. 573 (1961); N.L.R.B. v. Plasterers' Union, supra, 404 U.S. at 124; III v. IBEW, Local 134, 419 U.S. 428 (1975). Thus, under Section 10(k) of the Act, the Board is directed to "hear and determine" which of the competing unions or groups of employees is entitled to the disputed work. ^{22/} Consequently, if it appears from the Regional Director's investigation that a Section 8(b)(4)(D) charge has merit, a hearing to determine the dispute will be promptly held under Section 10(k). ^{23/} Pending the final resolution of the dispute, Section 10(l) provides the Regional Director with the discretion to seek injunctive relief from the unlawful conduct.

^{22/} Section 10(k) provides:

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

^{23/} Upon the close of the Section 10(k) hearing, which is nonadversary in character and is governed by the procedures applicable to the Board's representation proceedings (29 CFR § 102.91, 101.34), the entire record is transferred to the Board for determination of the dispute and assignment of the work (29 CFR § 102.90). The 10(k) determination is not a final order. III v. IBEW, Local 34, supra. No cease and desist order against either union or employer results therefrom, and "neither the employer nor the employees to whom he has assigned the work are legally bound to observe the Board's Section 10(k) decision." N.L.R.B. v. Plasterers' Local 79, supra, 404 U.S. at 126-127. However, if, following

(CONTINUED)

In this legislative plan, it is clear that the Section 10(k) proceedings were designed to provide the forum for the determination as to who is entitled to perform the disputed work. The Section 10(1) proceedings are designed to determine only whether injunctive relief is warranted to terminate the "indefensible" jurisdictional strike or picketing in order to "protect employers and the public from [its] detrimental economic impact" (N.L.R.B. v. Plasterers', supra, 404 U.S. at 103) and to permit the employer to assign the work at his will while the dispute is being resolved. Henderson v. International Union of Operating Engineers, supra, 420 F.2d at 809; McLeod v. National Maritime Union, supra, 457 F.2d at 496. It is not, therefore, the function of the district court to make an award of the disputed work, even if only on a temporary basis, and it exceeds its proper authority in doing so.

Thus, in Compton v. National Maritime Union, supra, the First Circuit set aside that portion of an interim order of a district court which, like the order herein, assigned the work in dispute to one of two competing unions. There, the National Maritime Union (NMU) represented the employees of four seagoing vessels managed by Marine Transportation Management, Inc. (MTM). The ships were actually owned by the Puerto Rico Maritime Shipping Authority (PRMSA), a governmentally established corporation of the Commonwealth of Puerto Rico. PRMSA also owned other ships which were managed by Puerto Rico Marine Management, Inc. (PRMMI) and the employees of those ships were repre-

23/ (CONTINUED) the issuance of the Board's decision and award of the work, the charged union refuses to comply with the Board's work assignment, a Section 8(b)(4)(D) unfair labor practice complaint will issue, and the normal complaint procedures will ensue. Alternatively, if the employer refuses to observe the 10(k) award, the 8(b)(4)(D) charge will be dismissed and the employer will lose the Section 8(b)(4)(D) protection against picketing. Ibid.

sented by the Seafarers International Union (SIU). PRMSA consolidated the management operations of MTM and PRMMI and transferred the operation of the four vessels managed by MTM to PRMMI. PRMMI notified the NMU that upon transfer of the four MTM vessels, the employees of those ships would be discharged and replaced by seamen covered by PRMMI's collective bargaining agreement with SIU. Thereafter, NMU established picket lines at PRMMI's premises.

Upon charges filed by PRMMI, Section 10(1) proceedings were initiated by the Board. The district court found reasonable cause to believe that the NMU violated Sections 8(b)(4)(B) and (D) and 8(b)(7)(A) of the Act by picketing PRMMI's premises and enjoined the allegedly unlawful conduct. ^{24/} However, the district court, concerned that the Board might lack jurisdiction over the controversy and would therefore be powerless to rectify any unlawful conduct by PRMMI in discharging NMU seamen, ordered PRMMI to reinstate those seamen who had manned the MTM vessels prior to the consolidation of the operations. In its order, the district court, as did the court below, made clear that in fashioning its directive to PRMMI, it was attempting to achieve an equitable balance between the potential "irreparable harm" to the NMU seamen, absent an order protecting their job rights, on the one hand, and the lack of any perceived "irreparable harm" resulting to PRMMI and SIU from the entry of such an order, on the other.

^{24/} The Board ultimately quashed the resulting Section 10(k) hearing, concluding that no true "jurisdictional dispute" cognizable under Section 8(b)(4)(D) of the Act was involved. 227 N.L.R.B. No. 155, 95 LRRM 1291 (1976), petition for review pending, No. 77-1043, 1063 (C.A. 1).

The First Circuit found that the policies of the Act would be undermined by such an order and reversed that portion of the order assigning the work in dispute to the NMU seamen. In so doing the Court stated (533 F.2d at 1276-1277):

The order can in no way be considered as necessary to protect the efficacy of the Board's ultimate disposition of the jurisdictional issue between NMU and SIU. The order does not work to prevent disruptions to commerce because the picketing activity is otherwise enjoined. Finally, the entire theory upon which the relief is ordered is irrelevant to the only proper concern of the court in this small area of permissible labor injunctive activity, the prevention of unfair labor practices within the meaning of Section 8 of the Act.

For essentially the same reasons, requests for relief similar to that granted by the court below have been rejected by this Court and by the Ninth Circuit as being contrary to the policies of the Act. In Henderson v. International Union of Operating Engineers, supra, Section 8(b)(4)(D) charges were filed against two unions, the Longshoremen and the Operating Engineers. Upon the Board's petition, a Section 10(1) injunction was issued, enjoining the conduct of both unions, but awarding the work to neither. The Engineers appealed. The Ninth Circuit held that the purpose of the injunctive relief was to leave the employers "free, under the protection of the injunction, to assign the work to either union, pending the Board's determination" of the matter and to protect the employers and the public from the unions' coercive activity. 420 F.2d at 808. The court stated that it was for the Board, in the first instance, to make an award of the work, and that

The Congressional intent in enacting Section 10(1) was not, as Engineers contend, to restore the status quo ante litem of the employees, but to prevent disruptions to commerce as a result of jurisdictional strikes and other unfair labor practices covered by that section.

420 F.2d at 808-809. Finally, the court remarked that to the extent the restoration of the status quo is a relevant consideration in 10(1) proceedings, "the status quo to be preserved is the employer's right to make work assignments without being subjected to continuing strike pressure, pending the Board decision in the unfair labor practice proceedings." (Id. at 808).

The same result was reached in McLeod v. National Maritime Union, *supra*, where this Court affirmed the district court's refusal to make an award of the work in dispute, citing with approval the Ninth Circuit's conclusion in Henderson that the status quo to be preserved is the employer's right to be free to make work assignments. Moreover, the court stated, "any interpretation of the status quo to be preserved must be made with an eye to the statutory policies involved, and here the statute is aimed at protecting employers from union unfair labor practices." (457 F.2d at 496). ^{25/}

As these decisions make clear, although the disputed portion of the district court's order was designed with the best intentions, it nevertheless is beyond Section 10(1)'s narrow purposes and exceeds the scope of the court's authority provided thereunder. Indeed, the order is totally antithetical to the purposes of the Act, for the order effectively rewards Local 282 for its unlawful picketing by granting it, at least in part, the very goals its prohibited conduct was intended to achieve. Such a result could only have the unwanted effect of encouraging this and other labor organizations to engage in similar unlawful conduct in the future in the hopes that they might obtain

^{25/} Cf. also Douds v. International Longshoremen's Association, 242 F.2d 808, 811 (C.A. 2, 1957); Schauffler v. Local 1291, ILA, 292 F.2d 182, 188 (C.A. 3, 1961).

through the manipulation of Section 10(1) injunction proceedings that which they could not achieve through lawful means. As the Supreme Court held with respect to a facet of the 10(k) proceeding, but which is also true with respect to 10(1) injunctions in the context of Section 8(b)(4)(D) violations (N.L.R.B. v. Plasterers', supra, 404 U.S. at 130):

[It is] clear that Congress intended to protect employers and the public from the detrimental economic impact of 'indefensible' jurisdictional strikes. It would therefore be myopic to transform a procedure that was meant to protect employer interests into a device that could injure them. In the absence of an 'unmistakable directive,' the court has refused to construe legislation in a fashion that will run counter to the goals Congress clearly intended to effectuate.

Such a distortion of the purposes of Section 10(1) proceedings should not be permitted to stand.

In view of the foregoing, we submit that the portion of the district court's order which directs the assignment of the work, pending the Board's resolution of the underlying charges, is not "just and proper" relief under Section 10(1) of the Act, and should be deleted.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the court below committed reversible error in failing to conclude that there was reasonable cause to believe that the Union was violating Section 8(b)(4)(i) and (ii)(B) of the Act and that injunctive relief was just and proper. Accordingly, the decision of the court below should be reversed, and the case remanded for the entry of an order granting a temporary injunction as prayed for in the petition to the court below. Additionally, we submit that the dis-

puted portions of the court's order enjoining the Union from violating Section 8(b)(4)(D) of the Act should be modified as requested.

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November, 1977

No. 77-6155

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL M. KAYNARD, Regional Director of
Region 29 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Petitioner-Appellant

v.

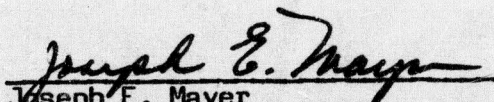
LOCAL 282, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Respondent-Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, one copy
of the brief for Petitioner-Appellant, National Labor Relations Board
and one copy of the Joint Appendix were duly mailed in a government
franked envelope to counsel listed below:

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Dated at Washington, D.C.
this 16th day of November, 1977